Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., Transferor to AT&T Corp., Transferee	CS Docket 98-176

OPPOSITION OF AT&T AND TCI TO SBC'S MOTION TO REQUIRE REVIEW OF HART-SCOTT-RODINO AND OTHER DOCUMENTS

Applicants AT&T Corp. ("AT&T") and Tele-Communications, Inc. ("TCI"), pursuant to Section 1.45 of the FCC's Rules, 47 C.F.R. §1.45, respectfully submit this opposition to the motion of SBC Communications, Inc. ("SBC") seeking an order requiring AT&T and TCI to permit review by members of the general public who may become parties to this proceeding (and other proceedings) of all documents the Applicants have submitted or will submit to the Department of Justice pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a.

SBC's motion should be denied. It is a transparent attempt to burden this proceeding and delay its resolution, and thereby to delay AT&T's planned upgrade of TCI's cable systems to provide facilities-based local exchange competition to SBC's monopolies. It also would undermine the statutory objectives of the Hart-Scott-Rodino process, while providing no countervailing

assistance to the Commission's public interest review.

Contrary to SBC's apparent assumption, the purpose of the Hart-Scott-Rodino process is not to create a mechanism by which competitors of merging parties may obtain discovery of their internal business plans. Instead, precisely because of their competitive sensitivity, the law provides for confidential treatment of those submissions. It provides that "no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding."[1]

Thus, the Commission has not routinely ordered third-party review of Hart-Scott-Rodino documents in all merger proceedings. It did not, for example, order such review in the proceedings on SBC's acquisition of Pacific Telesis, on AT&T's acquisition of Teleport Communications Group, or on SBC's acquisition of SNET. Instead, the Commission has permitted such review only where it first determined both that the proposed merger presented serious issues under the public interest standard and that third-party review of those documents would materially aid its resolution of those issues and not cause undue delay.[2] Furthermore, even where such review has been permitted -- as with the Bell Atlantic-NYNEX merger, the MCI-WorldCom merger, and the AT&T-McCaw merger -- the Commission has consistently refused to permit the kind of broadbrush review of all documents that SBC seeks here. Instead, in order to avoid both excessive disclosure and excessive and unnecessary burdens on the Commission and the applicants, the Commission has permitted to be reviewed only that subset of those documents that it has deemed

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1 See 15 U.S.C. § 18a(h).

2 See Memorandum Opinion and Order, Applications of Pacific Telesis Group and SBC Communications, Inc. for Consent to Transfer Control of Pacific Telesis Group and its Subsidiaries, 12 FCC Rcd. 2624, 2662 (1997).

most relevant to the proceeding.

In this instance, SBC's claimed need for review is contrived and insubstantial, and does not remotely satisfy the requisite standard.

First, SBC claims that the Commission must permit SBC to review AT&T's business plans "to ensure that AT&T is really serious" about entering local markets.[3] If SBC genuinely harbors such doubts, it should amend its own application for approval of its acquisition with Ameritech, for there it asserted that one of the reasons it needs to merge with Ameritech is to combat the threat posed by AT&T's potential entry in SBC's and Ameritech's home regions.[4] In all events, SBC's suggestion that AT&T has had an "on-again, off-again commitment to offering such service" is absurd -- as AT&T's enormous investment in TCG and its even larger proposed investment in TCI make plain.[5]

Second, SBC claims that "the Commission will need to look at the companies' internal documents to whether [sic] the merger threatens competition in [various] markets."[6] Such a vague, general, and unsupported claim provides no basis for overcoming the presumption of confidentiality

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[3] SBC Motion, p. 4.

[4] See Merger of SBC Communications and Ameritech Corp., Description of Transaction, Public Interest Showing, and Related Demonstrations, pp. 6, 85-92 (July 24, 1998).

[5] SBC Motion, p. 4. SBC's sole support for the claim that AT&T was ever "off" providing local service is a newspaper article describing AT&T's decision to abandon total service resale as a means of local entry because it proved uneconomic, particularly in light of incumbent LEC intransigence in complying with and implementing the Act. That experience, of course, is part of what spurred the proposed acquisition of TCI, which represents an alternative means of entry in many areas of the country. See AT&T/TCI Description of Transaction, Public Interest Showing, and Related Demonstrations, pp. 3-4, 37-44 ("AT&T/TCI Public Interest Statement").

[6] SBC Motion, p. 4.

that attaches to Hart-Scott-Rodino submissions. SBC provides no grounds for suggesting that a vertical merger of this sort could harm competition, and none exists.[7] To the contrary, SBC's motion is itself prompted by its concern that the merger will promote competition. And in all events, the burden of proof remains with the Applicants to demonstrate that the license transfers will serve the public interest. If that demonstration is made in the Application (or fails to be made), the Commission is not required to expand the record in order to fulfill its statutory obligation and render an appropriate decision.

Finally, SBC asserts (pp. 5-6) that AT&T's and TCI's Hart-Scott-Rodino documents would be useful to the proceedings reviewing other proposed mergers, including SBC's merger with Ameritech. This suggestion is especially bizarre. No such procedure or precedent for cross-designating Hart-Scott-Rodino documents in multiple merger proceedings involving unrelated parties exists. Nor would such broad disclosure serve any purpose other than to expose AT&T's and TCI's proprietary documents to an even greater number of individuals and firms.

A denial of SBC's Motion will not place the Hart-Scott-Rodino documents off-limits to the Commission. And if the Commission determines, upon further review, that some portion of those documents are relevant and important to its evaluation, it also has the authority to order third-

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[7] SBC's sole citation on this point is again a mischaracterization. SBC cites the AT&T/TCI Public Interest Statement as support for SBC's assertion (p. 4) that "the Applicants claim that the merger will not harm competition in a number of markets in which they are actual or potential competitors." The Public Interest Statement makes clear that AT&T and TCI are not now, and would not be, competitors, noting that there are only three markets in which there is any overlap at all and that those overlaps are either de minimis (in the cases of local telephony and internet services) or will be addressed through sale and/or creation of a voting trust (in the case of wireless services). See AT&T/TCI Public Interest Statement, pp. 18-38.

party access. SBC's Motion, however, is patently premature, overbroad, and ill-motivated, and should be denied outright.

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Certificate of Service

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